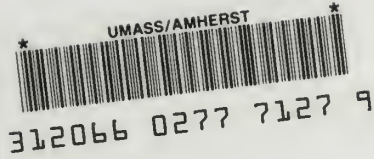


MASS. PL1.2: R29



**REPORT OF THE DIVISION OF PROFESSIONAL LICENSURE ON ITS
OPERATIONS AND THE IMPACT OF THE FISCAL YEAR 2003
APPROPRIATION TO THE HOUSE AND SENATE COMMITTEES ON WAYS
AND MEANS**

March 1, 2003 GOVERNMENT DOCUMENTS
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I. INTRODUCTION

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This report to the House and Senate Committees on Ways and Means is submitted in accordance with Chapter 177 of the Acts and Resolves of 2001. This Act requires the Director of the Division of Professional Licensure (Division) to annually report the impact of the Division of Professional Licensure Trust Fund (Trust Fund) upon the operations of the boards of professional regulation. This report demonstrates significant achievements by the Division toward improving the public protection provided by the boards in spite of some substantial challenges.

II. BACKGROUND

The Division of Professional Licensure is an umbrella agency that provides the services and infrastructure necessary for boards of professional registration. The primary mission of the boards is to establish and administer the minimum qualification requirements for entering a licensed profession, regulate the practice of those professions and take disciplinary action against licensees who harm the public by engaging in unethical, incompetent or improper conduct.

The Division has served 36 boards covering a broad range of professions from Nursing and Pharmacy to Public Accountancy and Real Estate to Plumbers and Electricians. The consolidation of the boards within the Division provides economies of scale and permits streamlined and efficient administrative services for the issuance of initial licenses and



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renewals, the collection of revenue and provision of IT and accounting services for the Commonwealth. Enforcement programs, including investigations, inspections, prosecution and adjudicatory hearings are provided to the boards by central units within the Division to ensure proper respect for the due process rights of licensees and to make the best use of scarce resources.

Yet the boards have historically been funded at half the level of funding provided to similar agencies in other states. This lack of funding has resulted in the development of an institutional backlog of disciplinary cases and unacceptably long time frames for cases to be resolved. The Trust Fund, which became effective in May 2002 holds the promise of providing the resources needed for the boards to overcome their historical under-funding and to make progress toward reducing complaint backlogs. This goal drives the operations of the Division.

III. TRUST FUND ENABLES THE DIVISION TO IMPROVE DESPITE CHALLENGES OF FY03

Thanks to the establishment of the Trust Fund, the Division has been able to hold its ground in the face of the staggering state budget conditions and even to make some headway against its backlog. It has done so in spite of substantial challenges. The Trust Fund has created the proper funding mechanism to ensure fees paid by licensees go toward solving the problems of the boards. Yet the promise of the Trust Fund has not been fully realized because of the substantial cut to the main appropriation, and the loss of key positions and personnel.

A. The Challenges: In addition to the initial \$1 million reduction in the direct appropriation to the Division, the Division's budget suffered \$420,000 in 9C cuts. These cuts are on top of the added responsibility of providing services for four recently created boards (Hearing Instrument Specialists, Home Inspectors, Dietitians and Nutritionists and Perfusionists) that were established without any additional line item funding.

The Trust has allowed the Division to begin to add key enforcement personnel necessary to resolve the backlog. The Division has contracted 3.5 new attorneys and 2 interns who are prosecuting cases and handling adjudicatory hearings for the boards. Unfortunately, these gains have in some measure been offset by the Division's loss of 9 positions through the Early Retirement Incentive Program and the loss of several key personnel to military leaves necessitated by the national emergencies facing our country. These setbacks have slowed our process but have not shaken our dedication toward improving our results. As demonstrated below, in spite of setbacks progress is being made.

Finally, an additional challenge to operations in FY03 has been the implementation of Chapter 184 of the Acts of 2002. This language called for the reassignment of seven boards to the Department of Public Health. Implementation of that legislation is not yet complete, primarily because separating the intertwined assets, accounts and activities of consolidated services provided to the boards is resulting in the need to duplicate functions and infrastructure, adding cost without adding value. Effective January 1, 2003, funding for the seven boards that regulate certain health professionals (Nurses, Pharmacists, Dentists, Perfusionists, Nursing Home Administrators, Respiratory Therapists, and Physician Assistants) was transferred to the Department of Public Health. As of today, the Division continues to house, service and conduct enforcement proceedings for all 36 boards. Interagency Service Agreements between DPH and the Division have been developed so that the Division is reimbursed for most of the services it continues to provide for DPH. Data below includes reference to all 36 boards.

B. The Trust Fund: Historically, the Division's annual appropriation has been among the lowest for professional licensing agencies nation-wide. In an effort to increase resources for enforcement to address the backlog, effective May 2002, the Division increased licensing fees by 50%, and pursuant to M.G.L. c. 10 §35V, was allowed to retain half of the increase in a Trust Fund. In FY02, the annual appropriation was \$6,939,803 (which included the seven health boards). In FY03, the annual appropriation of \$4,212,885 was \$1 million short of the funds needed for maintenance of current operations. In addition, 9C cuts added \$420,000 more to the cut from FY02

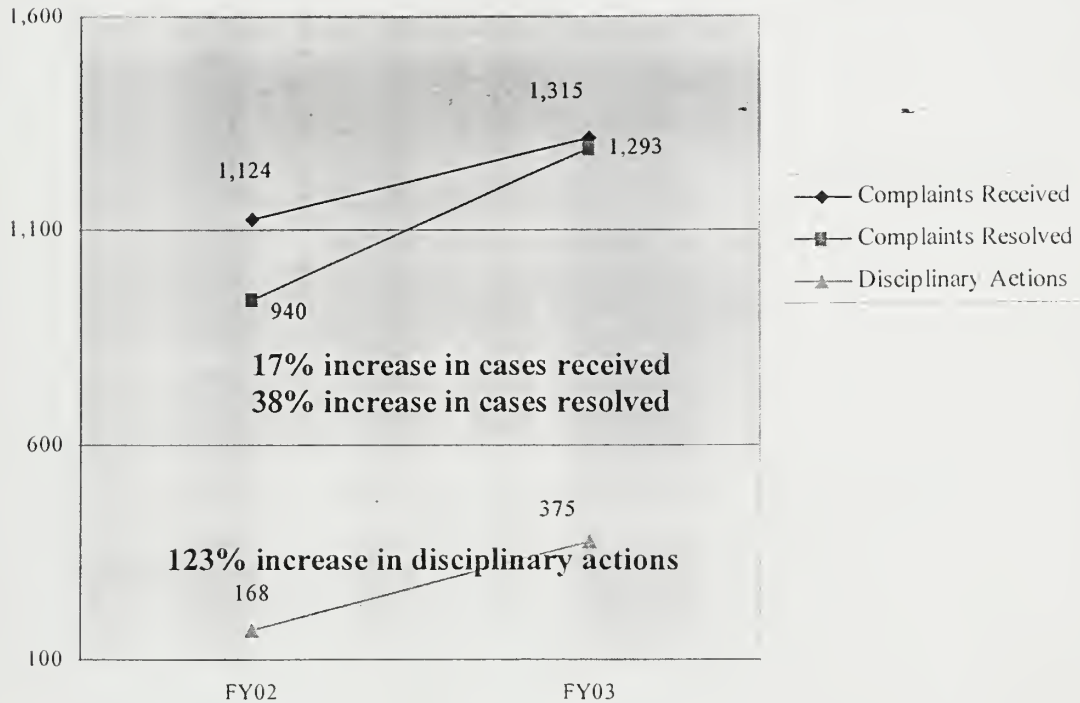
maintenance. As a result, planned expansion for the Division through its Trust Fund has been dramatically curtailed.

As of January 31, 2003, the Division has collected revenue of \$2,748,274 through the Trust Fund fee increase. \$1,374,137 of that revenue is deposited in the General Fund and the balance is credited to the Division Trust Fund. The Division projects that by the end of FY 03 it will collect an additional \$1.2 million that will be split evenly between the Division and the General Fund.

Expenditures of Trust Funds to date have been almost entirely dedicated to replacing maintenance funding lost due to cuts. The additional expenditures which have been possible so far have been targeted toward shared enforcement services, adding 1.5 prosecutors, 2 hearings counsel, and 2 legal interns which serve all 36 boards. Even these modest advancements have produced significant results.

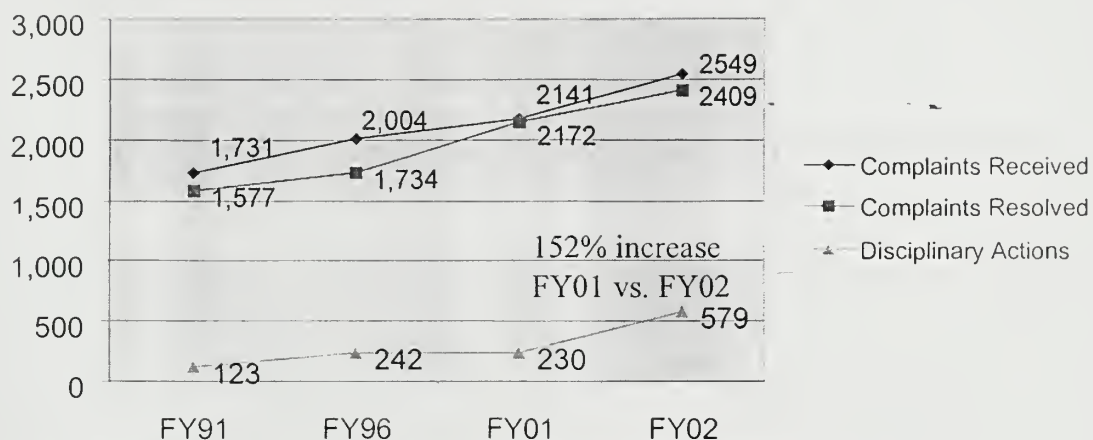
C. The Progress: In the first half of FY03, the Division dramatically increased both the number of complaints resolved and the number of disciplinary actions taken over the same period in FY02. During this period, the Division increased by 38% over the same period in FY02 the number of cases resolved (1293 compared to 940). Even more significantly, the number of cases resulting in discipline increased an unprecedented 123% during the same time (375 compared 168). For that same period, the Division substantially reduced the average number of days needed to resolve complaints. The number of new complaints lodged (1315) in the first half of FY03, however, is quickly out pacing these achievements.

Chart 1
Complaints Resolved FY2002 (1st half) vs. FY2003 (1st half)



The information in Chart 1 demonstrates that the Division is almost closing the gap of being able to resolve the same numbers of cases that are coming in. But, the historic problem is the institutional backlog, cases carried forward from previous years. This backlog has resulted from the continuing trend of annual increases in the number of new cases received in spite of annual improvements in Division performance. New complaints filed in the first half of FY03 increased 17% over the same period in FY02. This is on top of a 20% increase between FY01 and FY02. Chart 2 demonstrates this trend as well as the continuing trends in the improvement of Division productivity and the improvement in public protection through the dramatic increase in the cases that are resulting in discipline. The Division is improving its ability to prioritize cases and to take swifter action on the most serious matters. Thanks to the funding provided by the Trust and the ability of Division staff to rededicate themselves to resolving the backlog, the Division is poised for success.

Chart 2
Annual Complaints Received vs. Complaints Resolved
FY91 - FY02



Number of new complaints received annually has increased by 47%
 Number of complaints resolved annually has increased by 53%
 Number of annual disciplinary actions has increased by 371%

IV. CONCLUSION

The Division has made significant progress in resolving cases, increasing effective discipline and making in-roads in the staggering backlog. The employees of the Division, through team efforts and commitment have achieved impressive results despite recent challenges. The Division will continue to perform its statutory mandates, and will continue to work to increase enforcement and eliminate the backlog. The Division looks forward to working with House and Senate Ways and Means Committees to provide the Division with the tools it needs to respond to citizen complaints and eliminate the backlog.

